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Public Prosecutor v Liew Teng Shuan

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HIGH COURT (MELAKA) — CRIMINAL APPEAL NO 42–85 OF 2010
AHMAD NASFY JC
21 MAY 2012

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Criminal Procedure — Appeal — Appeal, against — Order unfreezing frozen assets — Whether institution of prosecution was outside 12-month period for instituting criminal proceedings against accused — Whether sessions court judge had committed error of law — Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ss 4(1), 44(1), 56(1) & (3)

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Criminal Procedure — Revision — Revisionary Power of High Court — Application for revision — SCJ made order of discharge not amounting to acquittal on the grounds that charge against accused was out of time — Whether this amounted to miscarriage of justice — Whether this decision should be set aside by High Court in exercise of its revisionary powers — Courts of Judicature Act 1964 s 31

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On 25 June 2008, the public prosecutor ('the PP') obtained an order under s 44(1) of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ('AMLA') to freeze the assets of Lim Teng Shuan ('the accused'), namely his bank accounts ('the freezing order'). It had been the PP's case that the monies in the bank accounts had been obtained as a result of the accused committing an offence under s 4(1) of the AMLA. Subsequently on 4 June 2009, an application was made to the sessions court for the issuance of a warrant of arrest against the accused for having committed an offence under s 4(1)(a) of the AMLA read together with s 87(1) of the same Act. On 13 October 2009, the accused appeared in court and was formally charged with committing the offence under s 4(1)(a) of the AMLA and three other charges under the same section of the AMLA. The accused was to be tried jointly for the four offences. At the hearing, the accused raised the preliminary objection that the prosecution had breached s 56 of the AMLA. The accused argued that s 56(1) of the AMLA to be read together with s 56(3) provided that where there was no 'prosecution' or 'conviction' for an offence under s 4(1) of the AMLA before the expiration of 12 months from the date of the freezing order, the assets seized under the freezing order should be released to the person from whom it was seized. Thus, it was the accused's case that since the freezing order was made on 25 June 2008, the institution of the prosecution on 13 October 2009 was outside the 12-month period for instituting criminal proceedings against the accused. Upon hearing the preliminary objection, the sessions court

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judge ('the SCJ') ordered the monies frozen by the PP to be released or returned to the accused as provided under s 56(1) of the AMLA as read together with s 56(3). The SCJ also went on to make an order of discharge not amounting to an acquittal on the grounds that the charge against the accused was out of time. This was the prosecution's appeal against the order of the SCJ for the unfreezing of frozen assets. The prosecution also applied for a revision of the SCJ's order for the discharge not amounting to an acquittal of the accused from the charge. The prosecution argued that the 'prosecution' against the accused for an offence under s 4(1) of the AMLA was instituted when the warrant of arrest together with the consent to prosecute was referred to the court and issued on 4 June 2009, and that this was well within the time frame of 12 months as set out in s 56(1) of the AMLA. As such it was the prosecution's contention that the SCJ should not have made the order to release the assets to the accused. As regards the revisionary power of the High Court, the prosecution relied on s 31 of the Courts of Judicature Act 1964 ('CJA') and urged this court to exercise its revisionary power to correct a miscarriage of justice and set aside the order for the discharge not amounting to an acquittal of the accused from the charge.

Held, allowing the appeal and the application for revision:

(1) In the present case, it was an agreed fact that the freezing order was made on 25 June 2008 in respect to the commission of an offence under s 4(1) of the AMLA. However, this court was unable to agree with the accused's argument that the freezing order had ceased to have effect because of the institution of the prosecution against the accused outside the 12 month period for instituting criminal proceedings ie on 13 October 2009. Instead, it was found that the criminal proceedings were in fact instituted when the sessions court had received the complaint from the PP and issued a warrant of arrest on 4 June 2009. By issuing the warrant of arrest on 4 June 2009, the court was seized with jurisdiction to try the case and as a result, the institution of the proceedings by the PP was complete. Thus, the learned SCJ had taken 'judicial notice' of the offence on 4 June 2009 and not on 13 October 2009 when the accused appeared in court and was charged. As such, if the 12-month period as set out in s 56(1) of the AMLA was to commence from the date of the freezing order, ie 25 June 2008, the institution of criminal proceedings on 4 June 2009 was well within that period (see paras 25, 28–30).

(2) Basically, s 31 of the CJA and s 323(1) of the Criminal Procedure Code empowered a judge to call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying itself as to the correctness, legality of any finding, sentence or order passed. In the present case there was an error of law committed by the SCJ when she made an order of discharge not amounting to an acquittal of the accused on the grounds that the charge was out of time. As such, this court had to

exercise its revisionary power to correct a miscarriage of justice. The order of the SCJ was accordingly set aside (see paras 32–34).

[Bahasa Malaysia summary

Pada 25 Jun 2008, pendakwa raya ('PR') telah memperoleh perintah di bawah s 44(1) Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaaan Keganasan 2001 ('APPWH') untuk membeku aset Lim Teng Shuan ('tertuduh'), iaitu akaun banknya ('perintah pembekuan'). Adalah menjadi kes PR bahawa wang di dalam akaun-akaun bank telah diperoleh melalui tertuduh melakukan kesalahan di bawah s 4(1) APPWH. Selanjutnya pada 4 Jun 2009, permohonan telah dibuat kepada mahkamah sesyen untuk pengeluaran waran tahan terhadap tertuduh kerana melakukan kesalahan di bawah s 4(1)(a) APPWH dan tiga kesalahan-kesalahan lain. Semasa perbicaraan, tertuduh telah membangkitkan bantahan awalan bahawa pihak pendakwaan telah bercanggah dengan s 56 APPWH. Tertuduh membantah bahawa s 56(1) APPWH dibaca bersama s 56(3) meperuntukkan bahawa di mana tidak terdapat 'prosecution' atau 'conviction untuk suatu kesalahan di bawah s 4(1) APPWH sebelum tarikh luput 12 bulan dari tarikh perintah pembekuan, aset yang dirampas di bawah perintah pembekuan dibuat pada 25 Jun 2008, pendakwaan yang dimulakan pada 13 Oktober 2009 adalah di luar tempoh masa 12 bulan untuk memulakan prosiding jenayah terhadap tertuduh. Semasa perbicaraan bantahan awalan, hakim mahkamah sesyen ('HMS') telah memerintah wang-wang yang dibeku oleh PR untuk dibayar atau dipulangkan kepada tertuduh seperti yang diperuntukkan di bawah s 56(1) APPWH yang dibaca bersama s 56(3). HMS seterusnya membuat perintah pelepasan yang tidak membawa kepada pembebasan atas alasan bahawa tuduhan terhadap tertuduh telah luput masa. Ini merupakan rayuan pihak pendakwaan terhadap perintah HMS untuk melepaskan aset yang dibeku. Pihak pendakwaan juga memohon penyemakan perintah HMS untuk pelepasan yang tidak membawa kepada pembebasan tertuduh daripada tuduhan. Pihak pendakwaan berhujah bahawa 'prosecution' terhadap tertuduh untuk kesalahan di bawah s 4(1) APPWH yang dimulakan apabila waran tahan bersama dengan kebenaran untuk mendakwa telah dirujukkan kepada mahkamah dan dikeluarkan pada 4 Jun 2009, dan bahawa ini adalah dalam jangka masa 12 bulan yang dinyatakan dalam s 56(1) APPWH. Oleh itu adalah menjadi hujahan pihak pendakwaan bahawa HMS tidak sepatutnya membuat perintah untuk melepaskan asset kepada tertuduh. Berkenaan dengan kuasa semakan Mahkamah Tinggi, pihak pendakwaan bergantung kepada s 31 Akta Mahkamah kehakiman 1964 ('AMK') dan menggesa mahkamah ini untuk melaksanakan kuasa semakan untuk membaik pulih ketidakadilan dan mengetepikan perintah untuk melepaskan tidak membawa kepada pembebasan tertuduh daripada tuduhan.

Diputuskan, membenarkan rayuan dan permohonan untuk penyemakan:

(1) Dalam kes ini, adalah fakta yang dipersetujui bahawa perintah

pembekuan yang dibuat pada 25 Jun 2008 berkenaan dengan kesalahan yang dilakukan di bawah s 4(1) APPWH. Walau bagaimanapun, mahkamah ini tidak dapat bersetuju dengan hujahan tertuduh bahawa perintah pembekuan telah berhenti bermula disebabkan pendakwaan yang dimulakan terhadap tertuduh adalah di luar tempoh masa 12 bulan untuk memulakan prosiding jenayah iaitu 13 Oktober 2009. Sebaliknya, adalah didapati bahawa prosiding jenayah telah dimulakan semasa mahkamah sesyen telah menerima aduan daripada PR dan mengeluarkan waran tahan pada 4 Jun 2009. Dengan mengeluarkan waran tahan 4 Jun 2009, mahkamah diberikan bidang kuasa untuk mendengar kes tersebut dan sebagai kesan, prosiding yang dimulakan oleh PR adalah sempurna. Justeru, HMS yang bijaksana telah mengambil 'judicial notice' kesalahan pada 4 Jun 2009 dan bukan pada 13 Oktober 2009 apabila tertuduh muncul di mahkamah dan telah dituduh. Oleh itu, sekiranya tempoh 12 bulan seperti yang dinyatakan di dalam s 56(1) APPWH bermula dari tarikh perintah pembekuan, iaitu 25 Jun 2008, prosiding jenayah yang dimulakan pada 4 Jun 2009 adalah dalam tempoh tersebut (lihat perenggan 25, 28–30).

(2) Secara ringkas, s 31 AMK dan s 323(1) Kanun Acara Jenayah memberi kuasa kepada seorang hakim untuk memanggil dan mengkaji rekod mana-mana prosiding di hadapan mana-mana mahkamah rendah jenayah untuk memastikan ketepatan, kesahan apa-apa dapatan, hukuman atau perintah yang diberikan. Dalam kes ini, terdapat kekhilafan undang-undang yang dilakukan oleh HMS apabila beliau telah membuat perintah pelepasan yang tidak membawa kepada pembebasan tertuduh atas alasan bahawa tuduhan telah luput masa. Oleh itu, mahkamah ini hendaklah melaksanakan kuasa semakannya untuk membaik pulih ketidakadilan. Perintah HMS oleh itu diketepikan (lihat perenggan 32–34).]

Notes

For cases on revisionary power of High Court, see 5(2) *Mallal's Digest* (4th Ed, 2010 Reissue) paras 3367–3389.

Cases referred to

Government of the Federation of Malaya v Surinder Singh Kanda [1961] MLJ 121; [1960] 1 LNS 30, CA (refd)
Nguang Chan Sdn Bhd v PP [2001] 2 MLJ 129, CA (refd)
PP v Lim Shui Wang & Ors [1979] 1 MLJ 65, FC (refd)
Perumal v PP [1970] 2 MLJ 265, FC (refd)
PP v Dato' Yap Peng [1987] 2 MLJ 311 (refd)
PP v Marwan bin Ismail [2008] 3 MLJ 51, CA (refd)
PP v Oladotun Lukmaru Umara & Ors [1991] 1 MLJ 187, HC (refd)
PP v Then Mee Kom; PP v Chan Kam Lai [1983] 2 MLJ 344 (refd)

A *Tengku Abdul Aziz v PP* [1951] MLJ 185 (refd)

Legislation referred to

Anti-Money Laundering and Anti-Terrorism Financing Act 2001 ss 4, 4(1), (1)(a), 41, 44, 44(1), (5), 50, 50(1), 51(1), 56, 56(1), (3), (1)(a), 87(1)(a),
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Courts of Judicature Act 1964 s 31

Criminal Procedure Code ss 136, 311, 315, 316, 317, 323, 323(1), 325, 367(3)

Federal Constitution arts 121, 145(3)

C Interpretation Acts 1948 and 1967

Yogasheelan a/l Samuagam (Shafee & Co) for the appellant.
Robert Pasang Alam (Deputy Public Prosecutor, Attorney General's Chambers) for the respondent.

D **Ahmad Nasfy JC:**

INTRODUCTION

E **[1]** The respondent, Mr Liew Teng Shuan, the third accused (hereinafter) referred to as 'the accused' before the Sessions Court at Melaka has raised a preliminary objection with respect the following:

(a) whether the prosecution had breach s 56 of the Anti-Money Laundering and Anti-Terrorism Financing Act 2001 'AMLA 2001';

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(b) whether the prosecution had breach s 44 of the AMLA 2001; and

(c) whether the prosecution had breach s 50 of the AMLA 2001.

G **[2]** The preliminary objection was heard on 6 October 2010 and emphasis was placed on s 56(3) of the AMLA 2001 read together with s 56(1) of the AMLA 2001.

[3] The accused is charged as follows:

H Bahawa pada 6 Mei 2008, Syarikat Microvest Engineering Sdn Bhd (No. Syarikat: 242844-K) di OCBC Bank (Malaysia) Bhd, Cawangan Puchong 2, Jalan Puteri 1/1 Dataran Puteri, Puchong, dalam Daerah Subang Jaya, di dalam Negeri Selangor, telah melibatkan diri dalam pengubahan wang haram iaitu menerima wang berjumlah USD 4,000,000.00 yang merupakan hasil daripada aktiviti haram dan
I oleh itu kamu sebagai Pengarah Syarikat Microvest Engineering Sdn Bhd (No. Syarikat: 242844-K) telah melakukan satu kesalahan yang boleh dihukum dibawah Subseksyen 4 (1)(a) Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001 dibaca bersama dengan Subseksyen 87 (1) (a) Akta Pencegahan Pengubahan Wang Haram dan Pencegahan Pembiayaan Keganasan 2001.

[4] Upon hearing the preliminary objection the learned sessions judge ('the learned SCJ') ordered that the monies frozen by the public prosecutor under s 50(1) of the AMLA be released or returned to the accused as provided under s 56(3) of the AMLA 2001 read together with s 56(1) of the AMLA 2001 ('the said order').

[5] After having heard the submission from the both parties, the learned SCJ ordered for further written submission to be filed in respect of the effect of the said order:

(a) whether the prosecution is estopped from prosecuting the accused and accordingly the accused should be acquitted and discharged;
or

(b) whether the prosecution is able to proceed with the trial against the accused.

[6] To this, the learned SCJ made an order of discharge not amounting to an acquittal.

[7] Unsatisfied with the decision of the learned SCJ, the deputy public prosecutor ('DPP1') now referred two matters before this court ie:

(a) an appeal against the order of the learned SCJ dated 26 October 2010 for the unfreezing of certain bank accounts previously frozen by the prosecution pursuant to s 44(1) and (5) which is to be read with s 50(1) and s 56(1) and (3) of the AMLA 2001;

(b) an application by the prosecution for a revision of the order of the learned SCJ dated 13 January 2011 for the discharged not amounting to an acquittal of the accused from a charge under s 4(1)(a) of the AMLA 2001 which is to be read together with s 87(1)(a) of the AMLA 2001.

CHRONOLOGY OF EVENTS

[8] The circumstances under which the material dates and/or the relevant orders are made are as follows:

25 June 2008 —	Order to freeze properly is made under Section 44 (1) of the AMLA 2001 in respect of the accused.
16 September 2008 —	Order to seize property i.e Hong Leong Bank and OSBC bank accounts is made under Section (1) of the AMLA 2001 by the Public Prosecutor in respect of the accused.
3 June 2009 —	Consent to prosecute issued by the Public Prosecutor

4 June 2009 —	Application is made to the Session Court Petaling Jaya for the issuance of Warrant of Arrest annexing the consent to prosecute dated 3 June 2008 and charge under Section 4(1) of the AMLA 2001 and warrant of arrest issues.
15 October 2009 —	The accused is arrested pursuant to warrant of arrest dated 4 June 2009. Prior to the arrest the accused was in overseas.
13 October 2009 —	The accused appears in the Session Court, Petaling Jaya. The Session Court Judge, on a request by the Public Prosecutor transfers the Section 4 AMLA 2001 offence in respect of the accused to the Session Court, Melaka to be jointly tried with the predicate offence (Kes Tangkap No: 62–66–09) and two other Section 4 AMLA offences (Kes Tangkap No: 62–114–09 —Tengku Shaifuliazam and Kes Tangkap No: 62–115–09, Mohd Fuad).
5 March 2009 —	Session Court 2 Melaka allows all the 4 offences to be tried jointly.
26 October 2009 —	Session Court 2 Melaka order all the monies in the bank accounts to return to the accused.
29 October 2009 —	The Public Prosecutor files Notice of Appeal against such order.
30 November 2009 —	The Public Prosecutor files Miscellaneous Criminal Application for order of stay of the Court Order made on 26 October 2009.
7 January 2011 —	The Public Prosecutor files application for revision against the Court Order made on 26 October 2010.
13 January 2011 —	The Session Court (2) Melaka orders the accused to be discharged not amounting to an acquittal of the Section 4 AMLA 2001 offence.
18 January 2011 —	The Public Prosecutor files application for revision against the Court Order made on 13 January 2011.

SUBMISSIONS ADVANCED BY BOTH PARTIES

[9] The learned DPP has argued that the period of 90 days commenced from the date the court has taken cognisance of the offence when it received the complaint from the public prosecutor and issued warrant of arrest (ie 4 June 2009). In other words, by issuing the warrant of arrest on 4 June 2009, the court was seized with jurisdiction to try the case and as a result, the institution of proceedings by the public prosecutor was complete. Thus the public prosecutor had successful invited the court to take action, and from then on, the whole conduct of the proceedings would be within the exclusive judicial power of the court until its conclusion and by taking cognisance of the offence, the learned SCJ was the right and power to try and to determine the case.

[10] It was further argued that the provision of s 136 of the Criminal

Procedure Code ('CPC') is clear on the court taking cognisance of the offence will cause summons or issue warrant in the first instance (refer *Public Prosecutor v Dato' Yap Peng* [1987] 2 MLJ 311). Thus, the learned SCJ has taken 'of judicial or authoritative notice' of the offence ie on 4 June 2009 when the complaint was lodged and warrant of arrest issued, not when the accused appeared and charged in court on 13 October 2009.

[11] Counsel for the accused submitted that the freezing order under s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the AMLA 2001 against the accused was made on 25 June 2008. Taking into account the said freezing order, the accused has to be charged on or before 26 September 2008. In this case, the accused was only charged well beyond the expiry of the 90 days period from the date of the said freezing order being made (ie 13 October 2009). Thus, the learned SCJ was right in ordering the properties earlier frozen by the said freezing order to be unfrozen and returned to the accused.

[12] It is also to be noted that the freezing of property provision under s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the AMLA 2001 is subject to s 50(1) of the AMLA 2001. This is evident from the opening sentence of s 44(1) of the AMLA 2001, which is to be read together with s 44(5) of the AMLA 2001 which states:

> subject to section 50 …
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> Section 50 (1) reads as follows:
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> When the *Public Prosecutor is satisfied an information given to him by an investigating officer that any movable property, including any monetary, instrument or any accretion to it which is the subject-matter of an offence under subsection 4 (1)* or a terrorism financing offence or evidence in relation to the commission of such offence or which is terrorist property, *is in the possession, custody, control of a financial institution,* he may notwithstanding any other law or rule of laws *after consultation with Bank Negara Malaysia* the Securities Commission or the Labuan Offshore financial Service Authority, as the case may be, by order direct financial institution not to part with otherwise dispose of such property or any part of it until the order is revoked or varied.

[13] Counsel for the accused argued that s 56(1) of the AMLA 2001 which is to be read together with s 56(3) of the AMLA 2001 provides that where there is no 'prosecution' or 'conviction' for an offence under s 4(1) of the AMLA 2001 and the prosecution has failed to apply to a High Court judge for an order of forfeiture of property after being satisfied that such property had been obtained as a result of or in connection with an offence under s 4(1) of the AMLA 2001 before the expiration of 12 months from the date of an order freezing or seizing such property, such property is to be released to the person from who it was frozen or seized. Hence, it is very crucial to determine what

amounts to 'prosecution' or 'conviction' in the context of s 56(1) of the AMLA 2001. As far as 'prosecution' is concerned, reference can be made to s 93 of the AMLA which states:

> No prosecution for an offence under this Act shall be instituted except by or with the written consent of the Public Prosecutor.

[14] Unfortunately, the word 'prosecution' is nowhere defined in the Interpretation Acts 1948 and 1967 nor in AMLA 2001. Therefore, references have to be made to various case laws to establish the meaning to be attributed to word 'prosecution' (refer *Perumal v Public Prosecutor* [1970] 2 MLJ 265, *Public Prosecutor v Oladotun Lukmaru Umara & Ors* [1991] 1 MLJ 187, *Public Prosecutor v Marwan bin Ismail* [2008] 3 MLJ 51). Based on the above cases, it is clear that 'prosecution' only occurs when the accused was produced before the sessions court and asked to plead to a charge under s 4(1) of the AMLA 2001 on 13 October 2009.

[15] As regard the revision application, counsel for the accused argued that in view of the order of the learned SCJ dated 26 October 2010 for unfreezing of certain bank accounts previously frozen by the prosecution (pursuant to s 44(1) and (5) which is to be read with s 50(1) and s 56(1) and (3) of the AMLA 2001) on account of failure of the prosecution to charge and/or prosecute and/or convict the accused within the stipulated period stated therein, then the prosecution is prevented from proceeding with the prosecution of the accused with a charge under s 4(1)(a) of the AMLA 2001 which is to be read together with s 87(1)(a) of the AMLA 2001. Thus the learned SCJ was right when she ordered for discharge not amounting to an acquittal of the accused from a charge under s 4(1)(a) of the AMLA 2001 which is to be read together with s 87(1)(a) of the AMLA 2001 (refer *Public Prosecutor v Then Mee Kom*; *Public Prosecutor v Then Mee Kom; Public Prosecutor v Chan Kam Lai* [1983] 2 MLJ 344).

[16] The former is the parent section and the latter provides the detailed procedure. On that basis, the power to freeze under s 50(1) of the AMLA 2001 is derivative from the general power under s 44(1) of the AMLA 2001 which is to be read with s 44(5) of the AMLA 2001 and is subject to the same time constraint.

[17] Based on the aforesaid provisions, it is clear that if a person against whom the freezing order under s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the AMLA 2001 is made has not been charged within a period of 90 days (ie on or before 26 September 2008) from the date of the said freezing order being made (ie 25 June 2008, the freezing order under s 44(1) of the AMLA 2001, and the freezing order under s 50(1) of the AMLA

2001 shall cease to have effect. Thus, the learned SCJ was right in ordering the properties earlier frozen by:

(a) the freezing order under s 44(1) of the AMLA 2001; and/or

(b) the freezing order under s 50(1) of the AMLA 2001 to be unfrozen and returned to the accused.

[18] It was further submitted that the following phrase under s 50(1) of the AMLA 2001 which state '… until the order is revoked or varied' does not exclude the operation of s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the AMLA 2001. In fact, it imposes a duty on the prosecution to take cognisance of s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the AMLA 2001, and to state the duration of 90 days. Since it is the prosecution who made the order under s 50(1), it is only logical that the prosecution has the capacity to revoke or vary the order within the time period allowable by law.

[19] In reply, the learned DPP submitted that s 44 is concerned solely with the freezing of property suspected to be derives from a s 4 offence. It empowers the enforcement agency investigating the predicate offence to freeze such property. This section is 'subject to s. 51' concerning the DPP's power to seize property in financial institutions. The words 'subject to' has been defined as:

> The words 'subject to the provisions of this Act' … are naturally words of restrictions. They assume an authority immediately given and give warning that elsewhere are limitation upon that authority will be found.
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> (refer *Government of the Federation of Malaya v Surinder Singh Kanda* [1961] MLJ 121; [1960] 1 LNS 30).

[20] Section 41 is therefore subservient to s 50(1). Section 50(1) must be read as restricting and limiting s 41. Thus, when a seizure order was issued under s 51(1) the freezing order under s 44(1) will cease to have effect as far as properties in financial institutions are concerned. In the present case the seizure order was made on 16 September 2008. If there had been no seizure order issued under s 50 then the properties in the financial institutions such as banks would have to be returned at the expiry of three months from the date of the freezing on there being no charge against the accused.

[21] It was also submitted that the 'prosecution' is instituted when warrant of arrest together with the consent to prosecute was referred to the court and issued on 4 June 2009. This is well within the time frame of one year set out in s 56(1). From the fact of the case s 56 does not apply as there is a prosecution within time and the learned SCJ should not have made the order to released the properties to the accused.

[22] As regard the revisionary power of High Court, s 31 of the Courts of Judicature Act 1964 confers on the High Court, in respect of criminal proceedings and matters in subordinate court, the power of revision. And s 323(1) of the Criminal Procedure Code, empowers a judge to call for and examine the record of any proceeding before any inferior criminal court for the purpose of satisfying himself as to the correctness, legality or propriety of any finding, sentence, or order recorded or passed. Section 325 of the Code further provides that in any case, the record of proceedings of which had been called for by the judge himself or which otherwise come to his knowledge, the judge vary, in this discretion; exercise any of the powers conferred by ss 311, 315, 316 and 317 of the Code.

[23] Basically, the duty lies with the High Court to see that the criminal law is properly administered by an inferior court. The judge's duty is to satisfy himself as to the correctness, legality, or propriety of any finding, sentence or order, recorded or passed and as to the regularity of any proceedings of such inferior court. In view of the foregoing reasons, and there was an error of law committed by the learned SCJ when she made an order of discharge not amounting to an acquittal of the accused on the ground that the charge was out of time when the prosecution was in fact instituted the proceeding within the realm of ss 44, 50 and 56 of the AMLA 2001. The DPP urge this honourable court to exercise a revisionary power to correct a miscarriage of justice and set aside the said order or any other order that this court deems fit in the circumstances of the case.

FINDING OF COURT

[24] There are two matters before this court ie *firstly* notice of appeal dated 28 October 2010 to set aside the order of the learned SCJ handed down on 26 October 2010 to release or return all the monies in the bank accounts to the accused which have been frozen by the public prosecutor under s 50(1) of the AMLA 2001 and *secondly*, an application for revision dated 18 January 2011 under s 323 of the Criminal procedure Code ('the CPC') for this court to call for and examine the record of proceeding of the same learned SCJ for the purpose of satisfying this court the correctness, legality or propriety of the order passed, ie to discharge the accused no amounting to an acquittal of an offence under s 4(1)(a) of the AMLA 2001 made on 13 January 2011.

[25] In the present case, there is an agreed fact that the freezing order under s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the AMLA 2001 was made on 25 June 2008.

[26] The said order is governed by s 44(1) of the AMLA 2001 which is to be read together with s 44(5) of the 2001 reads as follows:

> Subject to Section 50 where an enforcement agency, having the power to enforce the law under which a serious offence is committed, has reasonable grounds to suspect that an offence under subsection 4 (1) or a terrorism financing offence has been in being or is about to be committed by any person, it may issue on order freezing any property, as the case may be, whenever the property may be, or in this possession under his control or due from any source to him.

Whereas s 44(5) of the AMLA 2001 reads as follows:

> An order made under subsection (1) shall cease to have effect *after ninety days* from the date of the order, if the person against whom the order was made has not been charged with an offence under this act or a terrorism financing offence, as the case may be.

[27] In this regard, both parties has raised issues as follows:

(a) learned counsel for the accused argued that the freezing order dated 25 June 2008 has cease to have effect prior to the time the accused has been charged in court on 13 October 2009; and

(b) the learned DPP argued that the prosecution has fully complied with the provision of s 44(5) of the AMLA 2001 when the complaint was lodged on 4 June 2009 annexing the consent to prosecute marked 'PI' signed by *Timbalan Pendakwa Raya* Muhammad Saifuddin bin Hashim Musaimi on 3 June 2009 an a charge under s 4(1) of the AMLA 2001. In other words it could be said that the public prosecutor did 'instituted' the proceedings against the accused within the time ie on 4 June 2009.

[28] With respect, I am unable to agree with learned counsel contention that the date of instituting of the proceeding by the public prosecutor was on 13 October 2009.

[29] In this regard, I am of the view that the criminal proceedings are in fact instituted when the court has taken cognisance of the offence when it received the complaint from the public prosecutor and issued warrant of arrest on 4 June 2009. By issuing the warrant of arrest on 4 June 2009, the court was seized with jurisdiction to try the case and as a result, the institution of the proceedings by the public prosecutor was complete. In this case the public prosecutor had successful invited the court to take action, and from then on, the whole conduct of the proceeding would be within the exclusive judicial power of the court until its conclusion. Having taking cognisance of the offence, the learned SCJ has the right and power to try and to determine the case. Thus, the learned SCJ has taken 'of judicial or authoritative notice' of the offence, ie on 4 June 2009, when the complaint was lodged and warrant of arrest issued, not when the accused appeared and charged in court on 13 October 2009. To my mind when the accused was charged on 13 October,

2009, it was in consequence of cognisance by the court of the completion of the exercise of executive power to 'institute' the criminal proceedings by the public prosecutor. This executive power vested in the public prosecutor pursuant to art 145(3) of the Federal Constitution and s 367(3) of the CPC ultimately ceased on 4 June 2009 (see *Public Prosecutor v Lim Shui Wang & Ors* [1979] 1 MLJ 65, *Tengku Abdul Aziz v Public Prosecutor* [1951] MLJ 185, *Nguang Chan Sdn Bhd v Public Prosecutor* [2001] 2 MLJ 129).

[30] In brief, if the 12-month period is to commence from the s 44 order, ie 25 June 2008, the institution of the prosecution is well within that 12 month period being commenced on 4 June 2009 as the due date to institute the criminal proceedings is on 24 June 2009.

[31] In the circumstances, if sub-s 56(3) were to be considered as the embargo to institute criminal proceedings against the accused, the expiration of 12 months from the date of seizure ie 16 September 2008, is on 15 September 2009. In this case the proceedings was instituted when the learned SCJ took cognisance of the offence and issued warrant of arrest against the accused on 4 June 2009.

[32] As regard to the application for revision dated 18 January 2011 under s 323 of the CPC consequence of the order of discharge not amounting to an acquittal of the accused made by the learned SCJ on the ground that 90 days period under s 44 had lapsed on 24 September 2008 and therefore held that the 12-month period as stipulated by s 56(1) should run after the expiry of the s 44 order. Learned counsel for the accused contended that the art 121 of the Federal Constitution empowered the learned SCJ in making any relevant order that he deems fit inclusive of ordering for the discharge not amounting to an acquittal of the accused from a charge under s 4(1)(a) of the AMLA 2001 which is to be read together with s 87(1)(a) of the AMLA 2001 on account of the failure of the prosecution to charge and/or prosecute and/or convict the accused within the stipulated period stated therein.

[33] Basically, s 31 of the Courts Judicature Act 1964 and as well as s 323(1) of the CPC empower a judge to call for an examine the record of any proceeding before any inferior criminal court for the purpose of satisfying himself as to the correctness, legality of propriety of any finding, sentence or order recorded or passed. In doing so the purpose of justice will be served, as for example, accused is subjected to a vexatious and groundless prosecution.

[34] In view of the foregoing reasons and as there was an error of law committed by the learned SCJ when she made an order of discharge not amounting to acquittal of the accused on the ground that the charge was out of time when the prosecution was in fact instituted the proceedings within the

realm of ss 44, 50 and 56 of the AMLA 2001, I am of the view that this court has to exercise a revisionary power to correct a miscarriage of justice and set aside the said order.

[35] In that premise, the bank accounts which were released to the accused on 26 October 2010, which are the subject matter of the s 4(1) offence, and in view of the s 4(1) offence proceeding against him and that as the monies in the bank accounts had been obtained as a result of or in connection with the s 4(1) offence be set aside, and accordingly order the same to be in custody of the prosecution.

CONCLUSION

[36] For reason stated above, I allow the appeal as well as the application for revision by the public prosecutor.

Appeal and application for revision allowed.

Reported by Kohila Nesan